

Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
Elaine Wallace (SBN 197882)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
ewallace@jonesday.com

Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com
jfroyd@jonesday.com

Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600
swcowan@jonesday.com
jlfuchs@jonesday.com

Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

Case No. 4:07-CV-1658 PJH (EDL)

**DECLARATION OF ELAINE
WALLACE IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' OBJECTIONS TO
ORDER FOR SANCTIONS**

Date: N/A

Time: N/A

Courtroom: N/A

Judge: Hon. Phyllis J. Hamilton

WALLACE DECL. ISO DEFS.' RESP. TO
OBJS. TO ORDER FOR SANCTIONS
Case No. 4:07-CV-1658 PJH (EDL)

1 I, ELAINE WALLACE, declare:

2 I am an associate with the law firm of Jones Day and counsel for Defendants in the above-
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do
4 so, could testify competently thereto.

5 1. Attached hereto as Exhibit A is a true and correct copy of an excerpt from Docket No.
6 426, the Transcript of Proceedings held on August 18, 2009.

7 2. Exhibit 596 is an email and attached "scorecard" document that Oracle produced on
8 July 1, 2009.

9 3. Exhibit 591 is a PeopleSoft, Inc. financial forecast for 2004/2005 that Oracle produced
10 on February 6, 2009. Oracle did not submit Exhibits 596 or 591 to the Court with its objections,
11 although it relies on them and characterizes their contents in its objections. Oracle has designated
12 the content of these documents as "Confidential" and "Confidential – Attorneys Eyes Only"
13 under the protective order in the case. On October 27, 2009, I contacted Oracle's counsel by e-
14 mail to bring their attention to the fact that the documents had not been provided to the Court and
15 to ask whether Oracle would agree to permit Defendants to file them publicly with Defendants'
16 responses to the objections. On October 29, 2009 Oracle's counsel responded by email that
17 Oracle would not agree to the public filing of the documents but would "review the contents of
18 [Defendants'] Response to our Objections and determine at that time whether a supplemental
19 filing of these documents under seal is warranted."

20 4. Oracle states in its objections that the list of SAP customers "expanded from 63 to 83
21 per Defendants' latest revision made *after* they filed the motion." Objs. at 8. In fact, Defendants
22 served the original list of 61 customers on July 18, 2008. Defendants served a revised list
23 containing 81 customers on January 8, 2009, six months before filing their motion for sanctions.
24 Defendants served a revised list containing 83 customers on July 15, 2009, pursuant to this
25 Court's Order permitting Oracle to amend its complaint to add Siebel customers and to the
26 Court's scheduling order regarding Siebel discovery. Defendants served an updated list
27 containing 86 customers on October 17, 2009.

28 5. Attached hereto as Exhibit B is a true and correct copy of a February 12, 2009 letter

WALLACE DECL. ISO DEFS.' RESP. TO
OBJES. TO ORDER FOR SANCTIONS
Case No. 4:07-CV-1658 PJH (EDL)

1 from me, as counsel for Defendants, to Briana Rosenbaum, counsel for Oracle.

2 I declare under penalty of perjury under the laws of the United States and the State of
3 California that the foregoing is true and correct.

4 Executed this 29th day of October, 2009 in San Francisco, California.

5
6 /s/ Elaine Wallace
Elaine Wallace

7 SFI-622187v1
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28